



Federal Ethics Rules for Members of Federal Advisory Committees

Special Government Employees (SGE)

**Presented by:
HRSA Ethics Advisor**

Conflict of Interest

18 USC § 208

prohibits an SGE from participating in particular matters that could affect their financial interests or financial interests imputed to them by law

Imputed Interest

- Spouse
- Minor Child
- General Partner
- Organization in which an SGE serves as an officer, director, trustee, general partner, or employee
- Organization with which an SGE is negotiating or with which the SGE has an arrangement for prospective employment.

FACA SGE 208 Exemption

5 CFR § 2640.203(g)

Allows SGEs serving on Federal Advisory Committees (FAC) to participate in matters of general applicability where the disqualifying financial interest arises solely from the committee member's non-Federal employment or prospective employment, provided that the matter will not have a special or distinct effect on the employee or employer other than as part of a class.

***This exemption is unavailable if the employee (or those persons whose interests are imputed to the employee) owns stock, stock options, or has some other financial interest in the employer other the employment interest.**

Particular Matters

Specific Party Matters

- Focused upon the interests of identified persons in a specific proceeding or an isolatable transaction or related set of transactions.
 - E.g. grants, contracts, drug applications, etc.

Matters of General Applicability

- Focused on the interests of a discrete and identifiable class of persons/entities, but does not involve named parties.
 - E.g. recommendations or consideration of policies that affect an industry, group of manufacturers, or health care providers

Other 208 Exemptions

- Interests held in broadly diversified investment funds (e.g. most diversified mutual funds; not sector mutual funds)
- Publicly traded securities of \$15,000 or less (specific party matters; aggregate)
- Publicly traded securities of \$25,000 or less if the matter is a general policy matter and the total value of all investments in the affected industry sector is no more than \$50,000
- Employment in one campus of a multi-campus state university if the matter affects only another campus and the employee does not have multi-campus responsibilities

Waivers

18 U.S.C. § 208(b)(3)

Authorizes issuance of a waiver to an SGE who serves on a FAC if the need for the individual's services outweighs the potential for a conflict of interest created by the particular financial interest involved.

HHS only grants "general" waivers, that allow participation in matters that affect all institutions, or types of institutions, similarly. Even with a general waiver, SGEs must disqualify themselves from participation in all matters that specifically and uniquely affect their financial interests (e.g. specific party matters).

Standards of Ethical Conduct

5c.f.r. part 2635

**the Standards of Ethical Conduct for executive
branch employees, including SGE advisory
committee members**

Impartiality

5 C.F.R § 2635.502

Absent authorization from HRSA ethics, SGEs should avoid participating in specific party matters when circumstances would cause a reasonable person with knowledge of the relevant facts to question their impartiality

Misuse of Position

5 C.F.R. Part 2635, Subpart G

- Referring to their Government positions for their own private gain, the private gain of friends, relatives, or anyone with whom they are affiliated in a non-Governmental capacity, or for the endorsement of any product, service, or enterprise.
- Using their Government position to coerce or induce another person to provide any benefit to themselves or another person.
- Using non-public Government information in a financial transaction to further their private interests or those of another, or disclosing confidential or non-public information without authorization.

Gifts from Outside Sources

5 C.F.R. Part 2635, Subpart B

Any gift given to a committee member because of the member's service on an HHS advisory committee or from a HRSA “prohibited source” would raise concerns.

Gifts given to an SGE because of the SGE's position or achievements in the private (non-Government) sector generally are not problematic when it is clear that such gifts have not been offered or enhanced because of the SGE's committee status.

Gifts between Employees

5 C.F.R. Part 2635, Subpart C

SGEs may not give a gift to an official superior (HHS or HRSA employees whose official responsibilities include directing or evaluating the performance of the Advisory Committee).

Some exceptions:

- Items with a market value of \$10 or less
- Food and refreshments to be shared
- Personal hospitality provided at a residence
- Customary items given in connection with the receipt of personal hospitality if of a type and value customarily given on such occasions
- Gifts customarily given for infrequent special occasions (weddings, child birth, retirement, illness, etc.)

Outside Activities

All non-federal activities

Teaching, Speaking, Writing

5 C.F.R. § 2635.807

An SGE is prohibited from receiving compensation for teaching, speaking, and writing if:

- the activity is undertaken as an official Government duty
- the invitation was extended primarily because of the SGE's position
- the invitation was extended, directly or indirectly, by a person who has interests that may be affected substantially by the employee's official duties
- the information conveyed draws substantially on ideas or official data that are confidential or not publicly-available
- the subject matter concerns a specific party matter in which the SGE participated or is participating personally and substantially as a Government employee → however, SGE may accept compensation if they recuse from the official assignment (5 CFR § 5501.107(b))

Teaching, Speaking, Writing (cont'd)

EXCEPTIONS:

- Subjects within the committee member's discipline or inherent area of expertise based on the SGE's educational background or experience so long as it is not about or distinctly related to the work the SGE is providing to the Government.
- Teaching a course requiring multiple presentations that is part of the regularly established curriculum of an educational institution.

Political Activities

Hatch Act restrictions apply to SGEs during the period of any day in which they are performing government business. For example, SGEs may not engage in partisan political activity while on duty. This includes any activity directed toward the success or failure of a -

- Political Party,
- Candidate for Partisan Political Office, or
- Partisan Political Group

Foreign Activities

Foreign Gifts and Decorations Act (5 U.S.C. § 7342)

An employee may not accept a gift exceeding \$375 in value from a foreign government or an international organization.

- Excludes travel that takes place entirely outside the United States
- Extends to the spouse and dependents of the employee

18 U.S.C. § 219

Prohibits an SGE in certain situations from acting as an "agent of a foreign principal" or a "lobbyist" on behalf of a foreign entity.

Representational Activities

18 U.S.C. § 205

Prohibits an SGE from representing a party, with or without compensation, before HHS or another Federal agency or other Federal entity (such as a court or commission) in any specific party matter in which the SGE participated in personally and substantially as a Government employee if the United States is a party or has a direct and substantial interest.

- Lifetime ban – extends to post-employment activities via 18 U.S.C. § 207(a)(1)
- 5 CFR 2635.805 - Similar prohibition for service as an expert witness

Charitable Fundraising

5 C.F.R. § 2635.808

A committee member may not personally solicit funds or other support from any person or entity whose interests may be substantially affected by the performance or nonperformance of the committee member's Federal duties.

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Questions

